



h: 12/18/08
State of Wisconsin
2009 - 2010 LEGISLATURE

P2
LRB-0446/P1 RMNR

CTS:bjk:rs
Lstuy

DOA:.....Miner, BB0140 - Weights and measures program changes

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SAV

Inserts



1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 20.115 (1) (j) of the statutes is amended to read:

3 20.115 (1) (j) *Weights and measures inspection.* The amounts in the schedule
4 for weights and measures inspection, testing and enforcement under ch. 98. All
5 moneys received under ss. 93.06 (1p), 94.64 (4) (a) 6., 94.72 (6) (a) 3., 97.30 (3) (am),
6 98.04 (2), 98.05 (5), 98.16, 98.18 and ~~98.245 (7)~~ 98.245 (7m) shall be credited to this
7 appropriation.

8 SECTION 2. 98.16 (title) of the statutes is amended to read:

9 **98.16 (title) ~~Licensing of vehicle~~ Vehicle scale operators; scale**
10 **installation and testing.**

1 **SECTION 3.** 98.16 (2) (title) of the statutes is amended to read:

2 98.16 (2) (title) LICENSE FOR OPERATOR.

3 **SECTION 4.** 98.16 (2) (a) 1. of the statutes is renumbered 98.16 (2) (am) and
4 amended to read:

5 98.16 (2) (am) Except as provided in ~~subd. 2., a par. (dm),~~ no person may ~~not~~
6 operate a vehicle scale without ~~a~~ an annual license from the department. A separate
7 license is required for each scale. A license is not transferable between persons or
8 scales. A license expires on March 31 annually.

9 **(bm)** The department shall provide a license application form for persons
10 applying for a license. The form ~~may~~ shall require all of the following:

11 3. Other information reasonably required by the department for licensing
12 purposes.

13 **(cm)** A license application shall be accompanied by ~~applicable fees under pars.~~
14 ~~(b) and (c).~~ all of the following fees and surcharges:

15 **SECTION 5.** 98.16 (2) (a) 2. of the statutes is renumbered 98.16 (2) (dm) and
16 amended to read:

17 98.16 (2) (dm) ~~Subdivision 1. Paragraph~~ (am) does not apply to a person who
18 operates a vehicle scale only as an employee of a person who is required to hold a
19 license to operate the scale under this paragraph subsection.

20 **SECTION 6.** 98.16 (2) (b) of the statutes is renumbered 98.16 (2) (cm) 1. and
21 amended to read:

22 98.16 (2) (cm) 1. A license fee. The fee for a license under ~~par. (a)~~ this subsection
23 is ~~\$60~~ \$100, except that the department may establish a different fee by rule
24 promulgated under sub. (4).

25 **SECTION 7.** 98.16 (2) (bm) 1. of the statutes is created to read:

1 98.16 (2) (bm) 1. The applicant's correct legal name and business address and
2 any trade name under which the applicant proposes to operate the vehicle scale.

3 **SECTION 8.** 98.16 (2) (bm) 2. of the statutes is created to read:

4 98.16 (2) (bm) 2. A description of the nature and location of the vehicle scale.

5 **SECTION 9.** 98.16 (2) (c) of the statutes is renumbered 98.16 (2) (cm) 2. and
6 amended to read:

7 98.16 (2) (cm) 2. ~~An applicant for a license under par. (a) shall pay a~~ A license
8 fee surcharge of \$200 in addition to the license fee, if the department determines that
9 within one year prior to submitting the license application the applicant operated a
10 vehicle scale without a license as required by par. (a) (am). The license fee surcharge
11 is \$200, except that the department may establish a different surcharge by rule
12 promulgated under sub. (4). Payment of the license fee surcharge does not relieve
13 the applicant of any other civil or criminal liability for the operation of a vehicle scale
14 without a license but shall not constitute evidence of violation of a law.

15 **SECTION 10.** 98.16 (2) (cm) 3. of the statutes is created to read:

16 98.16 (2) (cm) 3. A testing surcharge under sub. (4), if it applies.

****NOTE: This draft creates a testing surcharge for failure to file required reports. As indicated in the drafting instructions, this surcharge is payable at the time of issuance of a license. If DATCP would prefer to create more immediate consequences for such a failure, an alternative would be to authorize DATCP to impose a penalty that would be immediately due and payable, and to prohibit DATCP from issuing a license to a person who owes such a penalty. The draft could further authorize DATCP to revoke a license held by a person who fails to pay such a penalty within a certain amount of time.

17 **SECTION 11.** 98.16 (2) (d) of the statutes is repealed.

18 **SECTION 12.** 98.16 (2m) of the statutes is created to read:

19 98.16 (2m) PERMIT FOR SCALE INSTALLATION OR CONSTRUCTION; VARIANCE. (a) No
20 person may install or relocate a vehicle scale without a permit from the department.
21 The department shall provide a permit application form for a person applying for a

1 permit under this paragraph. An application for a permit under this paragraph shall
2 be accompanied by a nonrefundable permit application fee in an amount established
3 by the department by rule promulgated under sub. (4).

4 (b) A person who installs or relocates a vehicle scale shall comply with
5 construction, operation, and maintenance standards and procedures established by
6 the department by rule under sub. (4), except that the department may grant a
7 variance from a construction standard if the department determines that the
8 variance is justified by special circumstances. The department may impose
9 conditions on the variance, including alternative construction standards, if the
10 department determines the conditions are necessary. The department shall provide
11 a variance application form for a person applying for a variance under this
12 paragraph. An application for a variance under this paragraph shall be accompanied
13 by a nonrefundable variance application fee in an amount established by the
14 department by rule promulgated under sub. (4).

15 **SECTION 13.** 98.16 (3) (intro.) of the statutes is renumbered 98.16 (4) and
16 amended to read:

17 98.16 (4) RULES. The department ~~may~~ shall promulgate rules ~~to establish~~
18 ~~license fees under sub. (2) (b) and to regulate the~~ construction, operation, testing, and
19 maintenance of vehicle scales. ~~The rules may include all of the following: The~~
20 department may promulgate rules to adjust fees and surcharges under subs. (2) (cm)
21 1. and 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale
22 operator if the operator fails to file a vehicle scale test report as required by a rule
23 promulgated by the department under this subsection.

24 **SECTION 14.** 98.16 (3) (a) of the statutes is repealed.

25 **SECTION 15.** 98.16 (3) (b) of the statutes is repealed.

1 **SECTION 16.** 98.16 (3) (c) of the statutes is repealed.

2 **SECTION 17.** 98.16 (3m) (b) 1. of the statutes is created to read:

3 98.16 (3m) (b) 1. Conduct the test and prepare a test report, according to rules
4 promulgated by the department under sub. (4).

5 **SECTION 18.** 98.16 (3m) (b) 2. of the statutes is created to read:

6 98.16 (3m) (b) 2. Provide a copy of the test report to the operator of the vehicle
7 scale and, if required by rules promulgated by the department under sub. (4), to other
8 persons.

9 **SECTION 19.** 98.16 (3m) (c) of the statutes is created to read:

10 98.16 (3m) (c) An operator of a vehicle scale shall file with the department a
11 copy of each test report prepared regarding the vehicle scale not more than 15 days
12 after the operator receives the test report.

13 **SECTION 20.** 98.16 (3m) (f) of the statutes is created to read:

14 98.16 (3m) (f) This subsection does not apply to a railway scale used exclusively
15 for the weighing of commodities on railroad track vehicles.

16 **SECTION 21.** 98.224 of the statutes is created to read:

17 **98.224 Vehicle tank meters. (1) DEFINITION.** In this section, "vehicle tank
18 meter" means a commercial meter used to measure liquid fuel, as defined in s. 98.225
19 (1).

20 **(2) OPERATOR LICENSED.** (a) Except as provided in par. (e), no person may
21 operate a vehicle tank meter without an annual license from the department. An
22 annual license expires on October 31. A separate license is required for each vehicle
23 tank meter. A license is not transferable between persons or vehicle tank meters.

24 (b) To obtain a license under par. (a), a person shall submit an application on
25 a form provided by the department. The application shall include all of the following:

INS
5-12

1 1. The applicant's correct legal name and business address, and any trade name
2 under which the applicant proposes to operate the vehicle tank meter.

3 2. A description of the vehicle tank meter, including identification of the meter
4 and the vehicle on which the meter is mounted.

5 3. The fees and surcharges required under par. (c). *identifying - the serial number or other identifying marks that appear on the meter*

6 4. Other relevant information reasonably required by the department for
7 licensing purposes.

8 (c) An application under par. (b) shall include all of the following fees and
9 surcharges:

10 1. A license fee established by the department by rule.

11 2. A surcharge established by the department by rule, if the department
12 determines that within one year prior to submitting the application, the applicant
13 operated the vehicle tank meter without a license required under par. (a).

14 3. A surcharge established by department rule if the department determines
15 that, within one year prior to submitting the application, the applicant failed to
16 comply with the reporting requirement under sub. (3).

17 4. Reinspection fees, if any, required under s. 98.255.

18 (d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant
19 of any other civil or criminal liability for a law violation, but is not evidence of a
20 violation of this section.

21 (e) Paragraph (a) does not apply to an individual who operates a vehicle tank
22 meter only as an employee of a person who is required to hold a license under par.
23 (a) to operate that vehicle tank meter.

24 **(3) TESTING AND REPORTING.** The operator of a vehicle tank meter shall have the
25 meter tested for accuracy at least annually by a person who is licensed under s. 98.18

1 (1) to perform the testing. The operator, or the tester on behalf of the operator, shall
2 report the results of each test to the department within 30 days after the testing is
3 completed. The operator shall retain a test report for at least 3 years.

4 (4) RULES. (a) The department shall promulgate rules that establish all of the
5 following:

6 1. License fee and surcharge amounts under sub. (2) (c).

7 2. Standards for the testing, reporting, and record keeping required under sub.

8 (3).

9 (b) The department may promulgate rules that establish standards for the
10 construction, operation, and maintenance of vehicle tank meters.

11 **SECTION 22.** 98.245 (4) (a) of the statutes is amended to read:

12 98.245 (4) (a) When liquefied petroleum gas is sold or delivered to a consumer
13 as a liquid and by liquid measurement the volume of liquid so sold and delivered shall
14 be corrected to a temperature of 60 degrees Fahrenheit through use of an approved
15 volume correction factor table, or through use of a meter that is equipped with a
16 sealed automatic compensating mechanism and that is ~~in compliance with sub. (7)~~
17 has been tested as required under sub. (8). All sale tickets shall show the delivered
18 gallons, the temperature at the time of delivery and the corrected gallonage, or shall
19 state that temperature correction was automatically made.

20 **SECTION 23.** 98.245 (4) (b) of the statutes is amended to read:

21 98.245 (4) (b) When liquefied petroleum gas is sold or delivered to a consumer
22 in vapor form by vapor measurement, the volume of vapor so sold and delivered shall
23 be corrected to a temperature of 60 degrees Fahrenheit through the use of a meter
24 that is equipped with a sealed automatic temperature compensating mechanism.
25 This paragraph shall apply to all meters installed for use in the vapor measurement

1 of liquefied petroleum gas in vapor form after May 24, 1978. This paragraph does
2 not prohibit the continued use of meters previously installed without a self-sealing
3 automatic temperature compensating mechanism, but no such meter may be
4 continued in use after January 1, 1986, unless brought into compliance with this
5 paragraph. Subsection ~~(7)~~ (8) does not apply to meters used to sell or deliver liquefied
6 petroleum gas that are subject to this paragraph.

7 **SECTION 24.** [✓] 98.245 (6) (a) (intro.) of the statutes is amended to read:

8 98.245 **(6)** (a) (intro.) No person may sell liquefied petroleum gas and deliver
9 it by a vehicle equipped with a pump and meter unless the meter is equipped with
10 a delivery ticket printer and ~~is in compliance with sub. (7)~~ has been tested as required
11 under sub. (8). Except as provided in par. (b), the seller shall, at the time of delivery,
12 either provide a copy of the delivery ticket printed by the delivery ticket printer to
13 the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain
14 all of the following information:

15 **SECTION 25.** [✓] 98.245 (7) of the statutes is repealed.

16 **SECTION 26.** [✓] 98.245 (7m) of the statutes is created to read:

17 98.245 **(7m)** METER OPERATORS LICENSED. (a) No person may operate a meter
18 to determine the amount of liquefied petroleum gas sold or delivered under sub. (4)
19 (a) unless the person holds an annual license from the department under this
20 subsection. An annual license expires on November 30. A separate license is
21 required for each liquefied petroleum gas meter. A license is not transferable
22 between persons or meters.

23 (b) To obtain a license under par. (a), a person shall submit an application on
24 a form provided by the department. The application shall include all of the following:

1 1. The applicant's correct legal name and business address, and any trade name
2 under which the applicant proposes to operate the liquefied petroleum gas meter.

3 2. A description of the liquefied petroleum gas meter, including identification
4 of the meter, and if applicable, the vehicle on which the meter is mounted.

* ***NOTE: What sort of identification is contemplated by the above language? If the
identification is something like a serial number, perhaps the language could be changed
to read, "including the serial number or other identifying marks that appear on the
liquefied petroleum gas meter."

5 3. The fees and surcharges required under par. (c).

6 4. Other relevant information reasonably required by the department for
7 licensing purposes.

8 (c) An application under par. (b) shall include the following fees and surcharges:

9 1. A license fee established by department rule.

10 2. A surcharge established by department rule, if the department determines
11 that, within one year prior to submitting the application, the applicant operated the
12 liquefied petroleum gas meter without a license required under par. (a).

13 3. A surcharge established by the department by rule if the department
14 determines that, within one year prior to submitting the application, the applicant
15 failed to comply with a test reporting requirement under sub. (8).

16 4. Reinspection fees, if any, required under s. 98.255.

17 (d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant
18 of any other civil or criminal liability for a law violation, but is not evidence of a
19 violation of this section.

20 (e) Paragraph (a) does not apply to an individual who operates a liquefied
21 petroleum gas meter only as an employee of a person who is required to hold a license
22 under par. (a) to operate that meter.

23 **SECTION 27.** 98.245 (8) of the statutes is created to read:

1 98.245 (8) TESTING AND REPORTING. A person that is required to hold a license
2 under sub. (7m) to operate a liquefied petroleum gas meter shall have the meter
3 tested for accuracy, at least annually, by a person who is licensed under s. 98.18 (1)
4 to perform the test. The meter operator, or the tester on behalf of the meter operator,
5 shall report the results of each test to the department within 30 days after the testing
6 is completed. The operator shall retain a record of each test for at least 3 years.

7 SECTION 28. 98.245 (9) of the statutes is created to read:

8 98.245 (9) RULES. (a) The department shall promulgate rules that establish
9 all of the following:

10 1. License fee and surcharge amounts under sub. (7m) (c).

11 2. Standards for the testing, reporting, and record keeping required under sub.
12 (8).

13 (b) The department may promulgate rules that establish standards for the
14 construction, operation, and maintenance of liquefied petroleum gas meters.

15 SECTION 29. 98.25 (title) of the statutes is renumbered 98.16 (3m) (title) and
16 amended to read:

17 98.16 (3m) (title) ~~VEHICLE SCALES: ANNUAL~~ ANNUAL TESTING.

18 SECTION 30. 98.25 (1) of the statutes is renumbered 98.16 (3m) (a) and amended
19 to read:

20 98.16 (3m) (a) The owner or operator of a scale with a weighing capacity of
21 5,000 pounds or more used for the commercial weighing of commodities shall cause
22 the scales to be tested and inspected at least annually for accuracy by an independent
23 ~~scale testing or service company in accordance with specifications, tolerances,~~
24 ~~standards and procedures established by the national institute of standards and~~
25 ~~technology and the department for the testing and examination of scales, using test~~

1 ~~weights approved by the department. The annual tests and inspections shall be at~~
2 ~~the expense of the owner or operator~~ a person licensed under s. 98.18 (1).

3 **SECTION 31.** [✓] 98.25 (2) of the statutes is renumbered 98.16 (3m) (b) (intro.) and
4 amended to read:

5 98.16 (3m) (b) (intro.) ~~A scale testing or service company person~~ conducting a
6 test under sub. (1) par. (a) shall, at the time of testing and inspection, promptly
7 furnish to the owner or operator of the scale a report showing the results of the test
8 and inspection with an additional copy for the department. The owner and operator
9 of a scale which is found to be inaccurate at the time of testing shall immediately
10 withdraw the scale from further use until necessary corrections, adjustments or
11 repairs are made and do all of the following:

12 (d) If a test under this subsection shows that a vehicle scale is inaccurate, the
13 scale may not be used until the inaccuracy is corrected and the scale is determined
14 to be accurate by the scale testing or service company. A copy of the report prepared
15 by the scale testing or service company shall be filed with the department by the
16 owner or operator of the scale within 15 days after the test and inspection has been
17 completed. The department shall maintain a list open for public inspection of all
18 scales tested and found to be accurate on the annual test a subsequent test under this
19 subsection.

20 **SECTION 32.** [✓] 98.25 (3) of the statutes is renumbered 98.16 (3m) (e) and amended
21 to read:

22 98.16 (3m) (e) ~~No person may falsify a test or determination of the accuracy of~~
23 ~~a vehicle scale tested under sub. (1) or file with the department a false report of a test~~
24 ~~of a vehicle scale under sub. (1), test result, or test report under this subsection.~~

25 **SECTION 33.** [✓] 98.25 (4) of the statutes is renumbered 98.16 (3m) (f).

✓
1 **SECTION 34.** 98.255 of the statutes is created to read:

2 **98.255 Reinspection; fee.** (1) If the department reinspects a weight or
3 measure because the department has found ~~that the device violates~~ this chapter or
4 a rule promulgated under this chapter, the department ~~shall~~ ^{a violation of} charge the operator of
5 the weight or measure a reinspection fee. _{may}

6 (2) The department shall establish the amount of the reinspection fee under
7 sub. (1) by rule and may establish different reinspection fees for different types of
8 weights and measures. The amount of a reinspection fee for a weight or measure may
9 not exceed the department's average cost to reinspect that type of weight or measure.

10 (3) A reinspection fee under sub. (1) is payable after the reinspection is
11 completed and is due upon written demand from the department. The department
12 may issue a demand for payment when it issues an annual license application form
13 to the operator of the weighing or measuring device.

14 **SECTION 9103. Nonstatutory provisions; Agriculture, Trade and**
15 **Consumer Protection.**

16 (1) EMERGENCY RULES; WEIGHTS AND MEASURES. The department of agriculture,
17 trade and consumer protection may promulgate rules to establish the initial amount
18 of a fee or surcharge under section 98.16 (3) (intro.) of the statutes, as affected by this
19 act, or sections 98.16 (2m) (a) or (b), 98.224 (2) (c) 1., 2., or 3., 98.245 (7m) (c) 1., 2.,
20 or 3., or 98.255 (2) of the statutes, as created by this act, as emergency rules under
21 section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the
22 statutes, emergency rules promulgated under this subsection remain in effect until
23 January 1, 2011, or the date on which permanent rules take effect, whichever is
24 sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
25 department is not required to provide evidence that promulgating a rule under this

Lbjk

1

Insert A:

COMMERCE AND ECONOMIC DEVELOPMENT

OTHER COMMERCE AND ECONOMIC DEVELOPMENT

Vehicle scales

Under current law, the Department of Agriculture, Trade and Consumer Protection (DATCP) issues annual licenses to operators of vehicle scales. DATCP is authorized to adjust the \$60 statutory license fee by rule, and may impose a \$200 license fee surcharge on an applicant who has operated a scale without a license in the year preceding application. Currently, no person may construct or relocate a scale without a permit from DATCP, but DATCP is not authorized to charge a permit fee. Also under current law, DATCP may grant a variance from its scale construction standards, but DATCP is not authorized to charge a variance fee. Current law requires annual testing of certain scales by an independent testing entity that is licensed by DATCP.

This bill permits DATCP to adjust the \$200 license fee surcharge by rule. The bill also permits DATCP to charge a fee for a permit to construct or relocate a scale and for a variance from DATCP construction standards, and DATCP may set the amount of the fees by rule. *LL*

Liquid petroleum gas meters

Under current law, an operator of a liquid petroleum (LP) gas meter must register the meter with DATCP and pay a one-time registration fee of \$25. Operators must test LP gas meters annually or face a \$100 testing surcharge.

Under the bill, DATCP issues annual licenses to operators of gas meters and may charge a fee in an amount DATCP sets by rule. DATCP may also impose a surcharge in an amount set by rule on an applicant who has operated a gas meter without a license in the year preceding application, and may adjust the \$100 testing surcharge by rule. The bill requires DATCP to promulgate testing, reporting, and record-keeping standards for gas meter operators, and permits DATCP to promulgate standards for gas meter construction, operation, and maintenance.

Vehicle tank meters

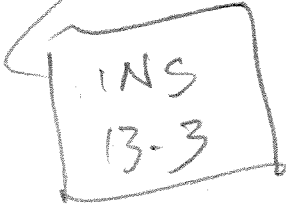
Current law requires a person who delivers fuel oil or certain other liquid fuels from a vehicle equipped with a pump and metering device unless the pump and metering device has a delivery ticket printer that can print data including the volume of fuel delivered. *e also equip*
e with

The bill requires an operator of a vehicle tank meter (used to measure a delivery of fuel oil or certain other liquid fuels) to obtain an annual license from DATCP. DATCP may charge a license fee and may impose a license fee surcharge on an applicant who operated a tank meter without a license in the year preceding application. DATCP may set the amount of the license fee and the license fee surcharge by rule and may promulgate standards for tank meter construction, operation, and maintenance. Under the bill, a tank meter operator must have the

- 1 subsection as an emergency rule is necessary for the preservation of public peace,
2 health, safety, or welfare and is not required to provide a finding of emergency for a
3 rule promulgated under this subsection.

4

(END)



tank meter tested annually, and must report the results to DATCP or face a surcharge in an amount set by DATCP by rule.

1

Insert 5-12:

If an operator fails to file a report as required in this paragraph, the department may assess a testing surcharge against the operator. The department may not issue a license under sub. (2) to an operator if the operator has failed to pay a testing surcharge assessed against the operator. If an operator fails to pay a testing surcharge assessed against the operator within 120 days after the department assessed the surcharge, the department may revoke the operator's license to operate the vehicle scale for which the operator has been assessed the surcharge.

LPS
Please
correct
component
for statute
text of
Insert 5-12

****NOTE: I have used a 120-day deadline to trigger the department's authority to revoke a license to operate a vehicle scale. Please let me know if you would like to use a different deadline. Also, should the draft contain similar provisions for the license fee surcharge under proposed s. 98.16 (2) (cm) 2., the vehicle tank meter surcharges under proposed s. 98.224 (2) (c) 2. and 3., and the meter operator surcharges under proposed s. 98.245 (c) 2. and 3.?

2

Insert 13-3:

3

(2) VEHICLE TANK METER LICENSE SURCHARGE. Notwithstanding section 98.224

4

(2) (c) 2. of the statutes, as ^{created} affected by this act, the department of agriculture, trade

5

and consumer protection may not collect a surcharge from an applicant who has

6

operated a vehicle tank meter without a license unless the unlicensed operation

7

occurred after the effective date of this subsection [LRB inserts date].

****NOTE: I have added the above nonstatutory language to clarify that no license surcharge may be imposed on a vehicle tank meter operator if the unlicensed operation occurred prior to the enactment of the new licensure requirement. Okay?

Sundberg, Christopher

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Thursday, January 22, 2009 5:16 PM
To: Sundberg, Christopher
Subject: FW: LRB Draft: 09-0446/P2 Weights and measures program changes

Chris,

Please see DATCP's note below regarding the 446/P2 draft. If time allows, please insert the 120 day deadline in the other sections you mentioned. Otherwise, the draft should be complete. Thanks,
Andrew

From: Walker, William D - DATCP
Sent: Thursday, January 22, 2009 5:10 PM
To: Miner, Andrew - DOA
Subject: Re: LRB Draft: 09-0446/P2 Weights and measures program changes

Andrew:

Regarding the note on p. 6. The 120 day deadline is fine and we would be glad to see a similar provision in the other sections listed. (However it is fine to leave the draft as is if time is short).

We're ok with the note on p. 14.

On 1/19/09 4:50 PM, "Miner, Andrew - DOA" <Andrew.Miner@Wisconsin.gov> wrote:

Bill – attached is a P2 version of the weights and measures draft that I don't believe you've seen yet. Please take a look at the drafter's notes on pages 6 and 14 and let me know if you have any suggestions regarding them.

Thanks,
Andrew

From: Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]
Sent: Monday, December 22, 2008 2:22 PM
To: Miner, Andrew - DOA
Cc: Steinmetz, Jana D - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0446/P2 Weights and measures program changes

Following is the PDF version of draft 09-0446/P2.



L. stay

DOA:.....Miner, BB0140 - Weights and measures program changes

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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OTHER COMMERCE AND ECONOMIC DEVELOPMENT

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This bill permits DATCP to adjust the \$200 license fee surcharge by rule. The bill also permits DATCP to charge a fee for a permit to construct or relocate a scale and for a variance from DATCP construction standards, and DATCP may set the amount of the fees by rule.

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Under current law, an operator of a liquid petroleum (LP) gas meter must register the meter with DATCP and pay a one-time registration fee of \$25. Operators must test LP gas meters annually or face a \$100 testing surcharge.

Under the bill, DATCP issues annual licenses to operators of gas meters and may charge a fee in an amount DATCP sets by rule. DATCP may also impose a surcharge in an amount set by rule on an applicant who has operated a gas meter without a license in the year preceding application, and may adjust the \$100 testing surcharge by rule. The bill requires DATCP to promulgate testing, reporting, and record-keeping standards for gas meter operators, and permits DATCP to promulgate standards for gas meter construction, operation, and maintenance.

Vehicle tank meters

Current law requires a person who delivers fuel oil or certain other liquid fuels from a vehicle equipped with a pump and metering device also equip the pump and metering device with a delivery ticket printer that can print data including the volume of fuel delivered.

The bill requires an operator of a vehicle tank meter (used to measure a delivery of fuel oil or certain other liquid fuels) to obtain an annual license from DATCP. DATCP may charge a license fee and may impose a license fee surcharge on an applicant who operated a tank meter without a license in the year preceding application. DATCP may set the amount of the license fee and the license fee surcharge by rule and may promulgate standards for tank meter construction, operation, and maintenance. Under the bill, a tank meter operator must have the tank meter tested annually, and must report the results to DATCP or face a surcharge in an amount set by DATCP by rule.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.115 (1) (j) of the statutes is amended to read:

20.115 (1) (j) *Weights and measures inspection.* The amounts in the schedule for weights and measures inspection, testing and enforcement under ch. 98. All moneys received under ss. 93.06 (1p), 94.64 (4) (a) 6., 94.72 (6) (a) 3., 97.30 (3) (am), 98.04 (2), 98.05 (5), 98.16, 98.18 and ~~98.245 (7)~~ 98.245 (7m) shall be credited to this appropriation.

SECTION 2. 98.16 (title) of the statutes is amended to read:

98.16 (title) ~~Licensing of vehicle~~ Vehicle scale operators; scale installation and testing.

SECTION 3. 98.16 (2) (title) of the statutes is amended to read:

1 98.16 (2) (title) LICENSE FOR OPERATOR.

2 **SECTION 4.** [✓]98.16 (2) (a) 1. of the statutes is renumbered 98.16 (2) (am) and
3 amended to read:

4 98.16 (2) (am) Except as provided in ~~subd. 2., a par. (dm), no~~ person may ~~not~~
5 operate a vehicle scale without ~~a~~ an annual license from the department. A separate
6 license is required for each scale. A license is not transferable between persons or
7 scales. A license expires on March 31 annually.

8 **(bm)** The department shall provide a license application form for persons
9 applying for a license. The form ~~may~~ shall require all of the following:

10 3. Other information reasonably required by the department for licensing
11 purposes.

12 **(cm)** A license application shall be accompanied by ~~applicable fees under pars.~~
13 ~~(b) and (c).~~ all of the following fees and surcharges:

14 **SECTION 5.** [✓]98.16 (2) (a) 2. of the statutes is renumbered 98.16 (2) (dm) and
15 amended to read:

16 98.16 (2) (dm) ~~Subdivision 1. Paragraph (am)~~ does not apply to a person who
17 operates a vehicle scale only as an employee of a person who is required to hold a
18 license to operate the scale under this paragraph subsection.

19 **SECTION 6.** [✓]98.16 (2) (b) of the statutes is renumbered 98.16 (2) (cm) 1. and
20 amended to read:

21 98.16 (2) (cm) 1. A license fee. The fee for a license under ~~par. (a)~~ this subsection
22 is ~~\$60~~ \$100, except that the department may establish a different fee by rule
23 promulgated under sub. (4).

24 **SECTION 7.** [✓]98.16 (2) (bm) 1. of the statutes is created to read:

1 98.16 (2) (bm) 1. The applicant's correct legal name and business address and
2 any trade name under which the applicant proposes to operate the vehicle scale.

3 **SECTION 8.** 98.16 (2) (bm) 2. of the statutes is created to read:

4 98.16 (2) (bm) 2. A description of the nature and location of the vehicle scale.

5 **SECTION 9.** 98.16 (2) (c) of the statutes is renumbered 98.16 (2) (cm) 2. and
6 amended to read:

7 98.16 (2) (cm) 2. ~~An applicant for a license under par. (a) shall pay a~~ A license
8 fee surcharge of \$200 in addition to the license fee, if the department determines that
9 within one year prior to submitting the license application the applicant operated a
10 vehicle scale without a license as required by par. (a) (am). The license fee surcharge
11 is \$200, except that the department may establish a different surcharge by rule
12 promulgated under sub. (4). ^{scored period} Payment of the license fee surcharge does not relieve
13 the applicant of any other civil or criminal liability for the operation of a vehicle scale
14 without a license but shall not constitute evidence of violation of a law.

15 **SECTION 10.** 98.16 (2) (d) of the statutes is repealed.

16 **SECTION 11.** 98.16 (2m) of the statutes is created to read:

17 98.16 (2m) PERMIT FOR SCALE INSTALLATION OR CONSTRUCTION; VARIANCE. (a) No
18 person may install or relocate a vehicle scale without a permit from the department.
19 The department shall provide a permit application form for a person applying for a
20 permit under this paragraph. An application for a permit under this paragraph shall
21 be accompanied by a nonrefundable permit application fee in an amount established
22 by the department by rule promulgated under sub. (4).

23 (b) A person who installs or relocates a vehicle scale shall comply with
24 construction, operation, and maintenance standards and procedures established by
25 the department by rule under sub. (4), except that the department may grant a

1 variance from a construction standard if the department determines that the
2 variance is justified by special circumstances. The department may impose
3 conditions on the variance, including alternative construction standards, if the
4 department determines the conditions are necessary. The department shall provide
5 a variance application form for a person applying for a variance under this
6 paragraph. An application for a variance under this paragraph shall be accompanied
7 by a nonrefundable variance application fee in an amount established by the
8 department by rule promulgated under sub. (4).

9 **SECTION 12.** 98.16 (3) (intro.) of the statutes is renumbered 98.16 (4) and
10 amended to read:

11 98.16 (4) RULES. The department ~~may~~ shall promulgate rules ~~to establish~~
12 ~~license fees under sub. (2) (b) and to regulate the construction, operation, testing, and~~
13 ~~maintenance~~ of vehicle scales. ~~The rules may include all of the following: The~~
14 ~~department may promulgate rules to adjust fees and surcharges under subs. (2) (cm)~~
15 ~~1. and 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale~~
16 ~~operator if the operator fails to file a vehicle scale test report as required by a rule~~
17 ~~promulgated by the department under this subsection.~~

18 **SECTION 13.** 98.16 (3) (a) of the statutes is repealed.

19 **SECTION 14.** 98.16 (3) (b) of the statutes is repealed.

20 **SECTION 15.** 98.16 (3) (c) of the statutes is repealed.

21 **SECTION 16.** 98.16 (3m) (b) 1. of the statutes is created to read:

22 98.16 (3m) (b) 1. Conduct the test and prepare a test report, according to rules
23 promulgated by the department under sub. (4).

24 **SECTION 17.** 98.16 (3m) (b) 2. of the statutes is created to read:

1 98.16 (3m) (b) 2. Provide a copy of the test report to the operator of the vehicle
2 scale and, if required by rules promulgated by the department under sub. (4), to other
3 persons.

4 **SECTION 18.** 98.16 (3m) (c) of the statutes is created to read:

5 98.16 (3m) (c) An operator of a vehicle scale shall file with the department a
6 copy of each test report prepared regarding the vehicle scale not more than 15 days
7 after the operator receives the test report. If an operator fails to file a report as
8 required in this paragraph, the department may assess a testing surcharge against
9 the operator. The department may not issue a license under sub. (2) to an operator
10 if the operator has failed to pay a testing surcharge assessed against the operator.
11 If an operator fails to pay a testing surcharge assessed against the operator within
12 120 days after the department assessed the surcharge, the department may revoke
13 the operator's license to operate the vehicle scale for which the operator has been
14 assessed the surcharge.

***NOTE: I have used a 120-day deadline to trigger the department's authority to
revoke a license to operate a vehicle scale. Please let me know if you would like to use
a different deadline. Also, should the draft contain similar provisions for the license fee
surcharge under proposed s. 98.16 (2) (cm) 2., the vehicle tank meter surcharges under
proposed s. 98.224 (2) (c) 2. and 3., and the meter operator surcharges under proposed s.
98.245 (7m) (c) 2. and 3.?

15 **SECTION 19.** 98.16 (3m) (f) of the statutes is created to read:

16 98.16 (3m) (f) This subsection does not apply to a railway scale used exclusively
17 for the weighing of commodities on railroad track vehicles.

18 **SECTION 20.** 98.224 of the statutes is created to read:

19 **98.224 Vehicle tank meters. (1) DEFINITION.** In this section, "vehicle tank
20 meter" means a commercial meter used to measure liquid fuel, as defined in s. 98.225
21 (1).

1 (2) OPERATOR LICENSED. (a) Except as provided in par. (e), no person may
2 operate a vehicle tank meter without an annual license from the department. An
3 annual license expires on October 31. A separate license is required for each vehicle
4 tank meter. A license is not transferable between persons or vehicle tank meters.

5 (b) To obtain a license under par. (a), a person shall submit an application on
6 a form provided by the department. The application shall include all of the following:

7 1. The applicant's correct legal name and business address, and any trade name
8 under which the applicant proposes to operate the vehicle tank meter.

9 2. A description of the vehicle tank meter, including the serial number or other
10 identifying marks that appear on the meter and the vehicle on which the meter is
11 mounted.

12 3. The fees and surcharges required under par. (c).

13 4. Other relevant information reasonably required by the department for
14 licensing purposes.

15 (c) An application under par. (b) shall include all of the following fees and
16 surcharges:

17 1. A license fee established by the department by rule.

18 2. A surcharge established by the department by rule, if the department
19 determines that within one year prior to submitting the application, the applicant
20 operated the vehicle tank meter without a license required under par. (a).

21 3. A surcharge established by department rule if the department determines
22 that, within one year prior to submitting the application, the applicant failed to
23 comply with the reporting requirement under sub. (3).

24 4. Reinspection fees, if any, required under s. 98.255.

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1 (d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant
2 of any other civil or criminal liability for a law violation, but is not evidence of a
3 violation of this section.

4 (e) Paragraph (a) does not apply to an individual who operates a vehicle tank
5 meter only as an employee of a person who is required to hold a license under par.
6 (a) to operate that vehicle tank meter.

7 (3) TESTING AND REPORTING. The operator of a vehicle tank meter shall have the
8 meter tested for accuracy at least annually by a person who is licensed under s. 98.18
9 (1) to perform the testing. The operator, or the tester on behalf of the operator, shall
10 report the results of each test to the department within 30 days after the testing is
11 completed. The operator shall retain a test report for at least 3 years.

12 (4) RULES. (a) The department shall promulgate rules that establish all of the
13 following:

- 14 1. License fee and surcharge amounts under sub. (2) (c).
15 2. Standards for the testing, reporting, and record keeping required under sub.
16 (3).

17 (b) The department may promulgate rules that establish standards for the
18 construction, operation, and maintenance of vehicle tank meters.

19 **SECTION 21.** 98.245 (4) (a) of the statutes is amended to read:

20 98.245 (4) (a) When liquefied petroleum gas is sold or delivered to a consumer
21 as a liquid and by liquid measurement the volume of liquid so sold and delivered shall
22 be corrected to a temperature of 60 degrees Fahrenheit through use of an approved
23 volume correction factor table, or through use of a meter that is equipped with a
24 sealed automatic compensating mechanism and that is ~~in compliance with sub. (7)~~
25 has been tested as required under sub. (8). All sale tickets shall show the delivered

1 gallons, the temperature at the time of delivery and the corrected gallonage, or shall
2 state that temperature correction was automatically made.

3 **SECTION 22.** 98.245 (4) (b) of the statutes is amended to read:

4 98.245 (4) (b) When liquefied petroleum gas is sold or delivered to a consumer
5 in vapor form by vapor measurement, the volume of vapor so sold and delivered shall
6 be corrected to a temperature of 60 degrees Fahrenheit through the use of a meter
7 that is equipped with a sealed automatic temperature compensating mechanism.
8 This paragraph shall apply to all meters installed for use in the vapor measurement
9 of liquefied petroleum gas in vapor form after May 24, 1978. This paragraph does
10 not prohibit the continued use of meters previously installed without a self-sealing
11 automatic temperature compensating mechanism, but no such meter may be
12 continued in use after January 1, 1986, unless brought into compliance with this
13 paragraph. Subsection (7) (8) does not apply to meters used to sell or deliver liquefied
14 petroleum gas that are subject to this paragraph.

15 **SECTION 23.** 98.245 (6) (a) (intro.) of the statutes is amended to read:

16 98.245 (6) (a) (intro.) No person may sell liquefied petroleum gas and deliver
17 it by a vehicle equipped with a pump and meter unless the meter is equipped with
18 a delivery ticket printer and ~~is in compliance with sub. (7)~~ has been tested as required
19 under sub. (8). Except as provided in par. (b), the seller shall, at the time of delivery,
20 either provide a copy of the delivery ticket printed by the delivery ticket printer to
21 the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain
22 all of the following information:

23 **SECTION 24.** 98.245 (7) of the statutes is repealed.

24 **SECTION 25.** 98.245 (7m) of the statutes is created to read:

1 98.245 (7m) METER OPERATORS LICENSED. (a) No person may operate a meter
2 to determine the amount of liquefied petroleum gas sold or delivered under sub. (4)
3 (a) unless the person holds an annual license from the department under this
4 subsection. An annual license expires on November 30. A separate license is
5 required for each liquefied petroleum gas meter. A license is not transferable
6 between persons or meters.

7 (b) To obtain a license under par. (a), a person shall submit an application on
8 a form provided by the department. The application shall include all of the following:

9 1. The applicant's correct legal name and business address, and any trade name
10 under which the applicant proposes to operate the liquefied petroleum gas meter.

11 2. A description of the liquefied petroleum gas meter, including the serial
12 number or other identifying marks that appear on the meter, and if applicable, the
13 vehicle on which the meter is mounted.

14 3. The fees and surcharges required under par. (c).

15 4. Other relevant information reasonably required by the department for
16 licensing purposes.

17 (c) An application under par. (b) shall include the following fees and surcharges:

18 1. A license fee established by department rule.

19 2. A surcharge established by department rule, if the department determines
20 that, within one year prior to submitting the application, the applicant operated the
21 liquefied petroleum gas meter without a license required under par. (a).

22 3. A surcharge established by the department by rule if the department
23 determines that, within one year prior to submitting the application, the applicant
24 failed to comply with a test reporting requirement under sub. (8).

25 4. Reinspection fees, if any, required under s. 98.255.

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10-24

(d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant of any other civil or criminal liability for a law violation, but is not evidence of a violation of this section.

(e) Paragraph (a) does not apply to an individual who operates a liquefied petroleum gas meter only as an employee of a person who is required to hold a license under par. (a) to operate that meter.

SECTION 26. 98.245 (8) of the statutes is created to read:

98.245 (8) TESTING AND REPORTING. A person that is required to hold a license under sub. (7m) to operate a liquefied petroleum gas meter shall have the meter tested for accuracy, at least annually, by a person who is licensed under s. 98.18 (1) to perform the test. The meter operator, or the tester on behalf of the meter operator, shall report the results of each test to the department within 30 days after the testing is completed. The operator shall retain a record of each test for at least 3 years.

SECTION 27. 98.245 (9) of the statutes is created to read:

98.245 (9) RULES. (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (7m) (c).
2. Standards for the testing, reporting, and record keeping required under sub. (8).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of liquefied petroleum gas meters.

SECTION 28. 98.25 (title) of the statutes is renumbered 98.16 (3m) (title) and amended to read:

98.16 (3m) (title) ~~VEHICLE SCALES: ANNUAL~~ ANNUAL TESTING.

✓
1 **SECTION 29.** 98.25 (1) of the statutes is renumbered 98.16 (3m) (a) and amended
2 to read:

3 98.16 (3m) (a) The owner or operator of a scale with a weighing capacity of
4 5,000 pounds or more used for the commercial weighing of commodities shall cause
5 the scales to be tested and inspected at least annually for accuracy by an independent
6 ~~scale testing or service company in accordance with specifications, tolerances,~~
7 ~~standards and procedures established by the national institute of standards and~~
8 ~~technology and the department for the testing and examination of scales, using test~~
9 ~~weights approved by the department. The annual tests and inspections shall be at~~
10 ~~the expense of the owner or operator~~ a person licensed under s. 98.18 (1).

✓
11 **SECTION 30.** 98.25 (2) of the statutes is renumbered 98.16 (3m) (b) (intro.) and
12 amended to read:

13 98.16 (3m) (b) (intro.) A scale testing or service company person conducting a
14 test under sub. (1) par. (a) shall, at the time of testing and inspection, promptly
15 furnish to the owner or operator of the scale a report showing the results of the test
16 and inspection with an additional copy for the department. The owner and operator
17 of a scale which is found to be inaccurate at the time of testing shall immediately
18 withdraw the scale from further use until necessary corrections, adjustments or
19 repairs are made and do all of the following:

20 (d) If a test under this subsection shows that a vehicle scale is inaccurate, the
21 scale may not be used until the inaccuracy is corrected and the scale is determined
22 to be accurate by the scale testing or service company. A copy of the report prepared
23 by the scale testing or service company shall be filed with the department by the
24 owner or operator of the scale within 15 days after the test and inspection has been
25 completed. The department shall maintain a list open for public inspection of all

1 ~~scales tested and found to be accurate on the annual test a subsequent test under this~~
2 ~~subsection.~~

3 **SECTION 31.** [✓] 98.25 (3) of the statutes is renumbered 98.16 (3m) (e) and amended
4 to read:

5 98.16 (3m) (e) No person may falsify a test ~~or determination of the accuracy of~~
6 ~~a vehicle scale tested under sub. (1) or file with the department a false report of a test~~
7 ~~of a vehicle scale under sub. (1), test result, or test report under this subsection.~~

8 **SECTION 32.** [✓] 98.25 (4) of the statutes is renumbered 98.16 (3m) (f).

9 **SECTION 33.** [✓] 98.255 of the statutes is created to read:

10 **98.255 Reinspection; fee.** (1) If the department reinspects a weight or
11 measure because the department has found a violation of this chapter or a rule
12 promulgated under this chapter, the department may charge the operator of the
13 weight or measure a reinspection fee.

14 (2) The department shall establish the amount of the reinspection fee under
15 sub. (1) by rule and may establish different reinspection fees for different types of
16 weights and measures. The amount of a reinspection fee for a weight or measure may
17 not exceed the department's average cost to reinspect that type of weight or measure.

18 (3) A reinspection fee under sub. (1) is payable after the reinspection is
19 completed and is due upon written demand from the department. The department
20 may issue a demand for payment when it issues an annual license application form
21 to the operator of the weighing or measuring device.

22 **SECTION 9103. Nonstatutory provisions; Agriculture, Trade and**
23 **Consumer Protection.**

24 (1) EMERGENCY RULES; WEIGHTS AND MEASURES. The department of agriculture,
25 trade and consumer protection may promulgate rules to establish the initial amount

1 of a fee or surcharge under section 98.16 (3) (intro.) of the statutes, as affected by this
2 act, or sections 98.16 (2m) (a) or (b), 98.224 (2) (c) 1., 2., or 3., 98.245 (7m) (c) 1., 2.,
3 or 3., or 98.255 (2) of the statutes, as created by this act, as emergency rules under
4 section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the
5 statutes, emergency rules promulgated under this subsection remain in effect until
6 January 1, 2011, or the date on which permanent rules take effect, whichever is
7 sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the
8 department is not required to provide evidence that promulgating a rule under this
9 subsection as an emergency rule is necessary for the preservation of public peace,
10 health, safety, or welfare and is not required to provide a finding of emergency for a
11 rule promulgated under this subsection.

12 (2) VEHICLE TANK METER LICENSE SURCHARGE. Notwithstanding section 98.224
13 (2) (c) 2. of the statutes, as created by this act, the department of agriculture, trade
14 and consumer protection may not collect a surcharge from an applicant who has
15 operated a vehicle tank meter without a license unless the unlicensed operation
16 occurred after the effective date of this subsection.... [LRB inserts date].

> ******NOTE:** I have added the above nonstatutory language to clarify that no license
surcharge may be imposed on a vehicle tank meter operator if the unlicensed operation
occurred prior to the enactment of the new licensure requirement. Okay?

17 (END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0446/lins
CTS:.....

Insert 4-12:

The department may not issue a license under this subsection to an operator if the operator has failed to pay a license fee surcharge assessed against the operator. plain

Insert 7-20:

The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

Insert 7-23:

The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

Insert 10-21:

The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

Insert 10-24:

The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0446/1dn

CTS:.....

Lbjk

Date

Andrew Miner:

Please review this draft carefully to ensure it is consistent with your intent.

- > Note that I have added language prohibit^{ing} issuance of a license to a person who has failed to pay a surcharge, per your instructions. I have not, however, added language that permits DATCP to revoke a license held by a person who has failed to pay a surcharge. Unlike the testing surcharge on page six of the previous draft, a person who owes one of the other surcharges created in the draft is not required to separately license the instrument that the person is licensed to operate. As a result, there isn't a license available for DATCP to revoke.

Please contact me if you have any questions.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0446/1dn
CTS:bjk:ph

January 24, 2009

Andrew Miner:

Please review this draft carefully to ensure it is consistent with your intent.

Note that I have added language prohibiting issuance of a license to a person who has failed to pay a surcharge, per your instructions. I have not, however, added language that permits DATCP to revoke a license held by a person who has failed to pay a surcharge. Unlike the testing surcharge on page six of the previous draft, a person who owes one of the other surcharges created in the draft is not required to separately license the instrument that the person is licensed to operate. As a result, there isn't a license available for DATCP to revoke.

Please contact me if you have any questions.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov



DOA:.....Miner, BB0140 - Weights and measures program changes

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau
COMMERCE AND ECONOMIC DEVELOPMENT
OTHER COMMERCE AND ECONOMIC DEVELOPMENT

Vehicle scales

Under current law, the DATCP issues annual licenses to operators of vehicle scales. DATCP is authorized to adjust the \$60 statutory license fee by rule, and may impose a \$200 license fee surcharge on an applicant who has operated a scale without a license in the year preceding application. Currently, no person may construct or relocate a scale without a permit from DATCP, but DATCP is not authorized to charge a permit fee. Also under current law, DATCP may grant a variance from its scale construction standards, but DATCP is not authorized to charge a variance fee. Current law requires annual testing of certain scales by an independent testing entity that is licensed by DATCP.

This bill permits DATCP to adjust the \$200 license fee surcharge by rule. The bill also permits DATCP to charge a fee for a permit to construct or relocate a scale and for a variance from DATCP construction standards, and DATCP may set the amount of the fees by rule.

Liquid petroleum gas meters

Under current law, an operator of a liquid petroleum (LP) gas meter must register the meter with DATCP and pay a one-time registration fee of \$25. Operators must test LP gas meters annually or face a \$100 testing surcharge.

Under the bill, DATCP issues annual licenses to operators of gas meters and may charge a fee in an amount DATCP sets by rule. DATCP may also impose a surcharge in an amount set by rule on an applicant who has operated a gas meter without a license in the year preceding application, and may adjust the \$100 testing surcharge by rule. The bill requires DATCP to promulgate testing, reporting, and record-keeping standards for gas meter operators, and permits DATCP to promulgate standards for gas meter construction, operation, and maintenance.

Vehicle tank meters

Current law requires a person who delivers fuel oil or certain other liquid fuels from a vehicle equipped with a pump and metering device also equip the pump and metering device with a delivery ticket printer that can print data including the volume of fuel delivered.

The bill requires an operator of a vehicle tank meter (used to measure a delivery of fuel oil or certain other liquid fuels) to obtain an annual license from DATCP. DATCP may charge a license fee and may impose a license fee surcharge on an applicant who operated a tank meter without a license in the year preceding application. DATCP may set the amount of the license fee and the license fee surcharge by rule and may promulgate standards for tank meter construction, operation, and maintenance. Under the bill, a tank meter operator must have the tank meter tested annually, and must report the results to DATCP or face a surcharge in an amount set by DATCP by rule.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (j) of the statutes is amended to read:

2 20.115 (1) (j) *Weights and measures inspection.* The amounts in the schedule
3 for weights and measures inspection, testing and enforcement under ch. 98. All
4 moneys received under ss. 93.06 (1p), 94.64 (4) (a) 6., 94.72 (6) (a) 3., 97.30 (3) (am),
5 98.04 (2), 98.05 (5), 98.16, 98.18 and ~~98.245 (7)~~ 98.245 (7m) shall be credited to this
6 appropriation.

7 **SECTION 2.** 98.16 (title) of the statutes is amended to read:

8 **98.16 (title) ~~Licensing of vehicle~~ Vehicle scale operators; scale**
9 **installation and testing.**

10 **SECTION 3.** 98.16 (2) (title) of the statutes is amended to read:

1 98.16 (2) (title) LICENSE FOR OPERATOR.

2 **SECTION 4.** 98.16 (2) (a) 1. of the statutes is renumbered 98.16 (2) (am) and
3 amended to read:

4 98.16 (2) (am) Except as provided in subd. 2., ~~a~~ par. (dm), no person may ~~not~~
5 operate a vehicle scale without ~~a~~ an annual license from the department. A separate
6 license is required for each scale. A license is not transferable between persons or
7 scales. A license expires on March 31 annually.

8 **(bm)** The department shall provide a license application form for persons
9 applying for a license. The form ~~may~~ shall require all of the following:

10 3. Other information reasonably required by the department for licensing
11 purposes.

12 **(cm)** A license application shall be accompanied by ~~applicable fees under pars.~~
13 ~~(b) and (c).~~ all of the following fees and surcharges:

14 **SECTION 5.** 98.16 (2) (a) 2. of the statutes is renumbered 98.16 (2) (dm) and
15 amended to read:

16 98.16 (2) (dm) ~~Subdivision 1. Paragraph (am)~~ does not apply to a person who
17 operates a vehicle scale only as an employee of a person who is required to hold a
18 license to operate the scale under this ~~paragraph~~ subsection.

19 **SECTION 6.** 98.16 (2) (b) of the statutes is renumbered 98.16 (2) (cm) 1. and
20 amended to read:

21 98.16 (2) (cm) 1. A license fee. The fee for a license under ~~par. (a)~~ this subsection
22 is \$60 ~~\$100~~, except that the department may establish a different fee by rule
23 promulgated under sub. (4).

24 **SECTION 7.** 98.16 (2) (bm) 1. of the statutes is created to read:

1 98.16 (2) (bm) 1. The applicant's correct legal name and business address and
2 any trade name under which the applicant proposes to operate the vehicle scale.

3 **SECTION 8.** 98.16 (2) (bm) 2. of the statutes is created to read:

4 98.16 (2) (bm) 2. A description of the nature and location of the vehicle scale.

5 **SECTION 9.** 98.16 (2) (c) of the statutes is renumbered 98.16 (2) (cm) 2. and
6 amended to read:

7 98.16 (2) (cm) 2. ~~An applicant for a license under par. (a) shall pay a~~ A license
8 fee surcharge of \$200 in addition to the license fee, if the department determines that
9 within one year prior to submitting the license application the applicant operated a
10 vehicle scale without a license as required by par. (a) ~~(am)~~. The license fee surcharge
11 is \$200, except that the department may establish a different surcharge by rule
12 promulgated under sub. (4). The department may not issue a license under this
13 subsection to an operator if the operator has failed to pay a license fee surcharge
14 assessed against the operator. Payment of the license fee surcharge does not relieve
15 the applicant of any other civil or criminal liability for the operation of a vehicle scale
16 without a license but shall not constitute evidence of violation of a law.

17 **SECTION 10.** 98.16 (2) (d) of the statutes is repealed.

18 **SECTION 11.** 98.16 (2m) of the statutes is created to read:

19 98.16 (2m) PERMIT FOR SCALE INSTALLATION OR CONSTRUCTION; VARIANCE. (a) No
20 person may install or relocate a vehicle scale without a permit from the department.
21 The department shall provide a permit application form for a person applying for a
22 permit under this paragraph. An application for a permit under this paragraph shall
23 be accompanied by a nonrefundable permit application fee in an amount established
24 by the department by rule promulgated under sub. (4).

(b) A person who installs or relocates a vehicle scale shall comply with construction, operation, and maintenance standards and procedures established by the department by rule under sub. (4), except that the department may grant a variance from a construction standard if the department determines that the variance is justified by special circumstances. The department may impose conditions on the variance, including alternative construction standards, if the department determines the conditions are necessary. The department shall provide a variance application form for a person applying for a variance under this paragraph. An application for a variance under this paragraph shall be accompanied by a nonrefundable variance application fee in an amount established by the department by rule promulgated under sub. (4).

SECTION 12. 98.16 (3) (intro.) of the statutes is renumbered 98.16 (4) and amended to read:

98.16 (4) RULES. The department ~~may~~ shall promulgate rules ~~to establish license fees under sub. (2) (b) and to regulate the construction, operation, testing, and maintenance of vehicle scales. The rules may include all of the following: The department may promulgate rules to adjust fees and surcharges under subs. (2) (cm) 1. and 2. and (2m) (a) and (b) and to impose a testing surcharge upon a vehicle scale operator if the operator fails to file a vehicle scale test report as required by a rule promulgated by the department under this subsection.~~

SECTION 13. 98.16 (3) (a) of the statutes is repealed.

SECTION 14. 98.16 (3) (b) of the statutes is repealed.

SECTION 15. 98.16 (3) (c) of the statutes is repealed.

SECTION 16. 98.16 (3m) (b) 1. of the statutes is created to read:

1 98.16 (3m) (b) 1. Conduct the test and prepare a test report, according to rules
2 promulgated by the department under sub. (4).

3 **SECTION 17.** 98.16 (3m) (b) 2. of the statutes is created to read:

4 98.16 (3m) (b) 2. Provide a copy of the test report to the operator of the vehicle
5 scale and, if required by rules promulgated by the department under sub. (4), to other
6 persons.

7 **SECTION 18.** 98.16 (3m) (c) of the statutes is created to read:

8 98.16 (3m) (c) An operator of a vehicle scale shall file with the department a
9 copy of each test report prepared regarding the vehicle scale not more than 15 days
10 after the operator receives the test report. If an operator fails to file a report as
11 required in this paragraph, the department may assess a testing surcharge against
12 the operator. The department may not issue a license under sub. (2) to an operator
13 if the operator has failed to pay a testing surcharge assessed against the operator.
14 If an operator fails to pay a testing surcharge assessed against the operator within
15 120 days after the department assessed the surcharge, the department may revoke
16 the operator's license to operate the vehicle scale for which the operator has been
17 assessed the surcharge.

18 **SECTION 19.** 98.16 (3m) (f) of the statutes is created to read:

19 98.16 (3m) (f) This subsection does not apply to a railway scale used exclusively
20 for the weighing of commodities on railroad track vehicles.

21 **SECTION 20.** 98.224 of the statutes is created to read:

22 **98.224 Vehicle tank meters. (1) DEFINITION.** In this section, "vehicle tank
23 meter" means a commercial meter used to measure liquid fuel, as defined in s. 98.225
24 (1).

1 **(2) OPERATOR LICENSED.** (a) Except as provided in par. (e), no person may
2 operate a vehicle tank meter without an annual license from the department. An
3 annual license expires on October 31. A separate license is required for each vehicle
4 tank meter. A license is not transferable between persons or vehicle tank meters.

5 (b) To obtain a license under par. (a), a person shall submit an application on
6 a form provided by the department. The application shall include all of the following:

7 1. The applicant's correct legal name and business address, and any trade name
8 under which the applicant proposes to operate the vehicle tank meter.

9 2. A description of the vehicle tank meter, including the serial number or other
10 identifying marks that appear on the meter and the vehicle on which the meter is
11 mounted.

12 3. The fees and surcharges required under par. (c).

13 4. Other relevant information reasonably required by the department for
14 licensing purposes.

15 (c) An application under par. (b) shall include all of the following fees and
16 surcharges:

17 1. A license fee established by the department by rule.

18 2. A surcharge established by the department by rule, if the department
19 determines that within one year prior to submitting the application, the applicant
20 operated the vehicle tank meter without a license required under par. (a). The
21 department may not issue a license under this subsection to an operator if the
22 operator has failed to pay a surcharge under this subdivision assessed against the
23 operator.

24 3. A surcharge established by department rule if the department determines
25 that, within one year prior to submitting the application, the applicant failed to

1 comply with the reporting requirement under sub. (3). The department may not
2 issue a license under this subsection to an operator if the operator has failed to pay
3 a surcharge under this subdivision assessed against the operator.

4 4. Reinspection fees, if any, required under s. 98.255.

5 (d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant
6 of any other civil or criminal liability for a law violation, but is not evidence of a
7 violation of this section.

8 (e) Paragraph (a) does not apply to an individual who operates a vehicle tank
9 meter only as an employee of a person who is required to hold a license under par.
10 (a) to operate that vehicle tank meter.

11 **(3) TESTING AND REPORTING.** The operator of a vehicle tank meter shall have the
12 meter tested for accuracy at least annually by a person who is licensed under s. 98.18
13 (1) to perform the testing. The operator, or the tester on behalf of the operator, shall
14 report the results of each test to the department within 30 days after the testing is
15 completed. The operator shall retain a test report for at least 3 years.

16 **(4) RULES.** (a) The department shall promulgate rules that establish all of the
17 following:

- 18 1. License fee and surcharge amounts under sub. (2) (c).
19 2. Standards for the testing, reporting, and record keeping required under sub.
20 (3).

21 (b) The department may promulgate rules that establish standards for the
22 construction, operation, and maintenance of vehicle tank meters.

23 **SECTION 21.** 98.245 (4) (a) of the statutes is amended to read:

24 98.245 (4) (a) When liquefied petroleum gas is sold or delivered to a consumer
25 as a liquid and by liquid measurement the volume of liquid so sold and delivered shall

1 be corrected to a temperature of 60 degrees Fahrenheit through use of an approved
2 volume correction factor table, or through use of a meter that is equipped with a
3 sealed automatic compensating mechanism and that is ~~in compliance with sub. (7)~~
4 has been tested as required under sub. (8). All sale tickets shall show the delivered
5 gallons, the temperature at the time of delivery and the corrected gallonage, or shall
6 state that temperature correction was automatically made.

7 **SECTION 22.** 98.245 (4) (b) of the statutes is amended to read:

8 98.245 (4) (b) When liquefied petroleum gas is sold or delivered to a consumer
9 in vapor form by vapor measurement, the volume of vapor so sold and delivered shall
10 be corrected to a temperature of 60 degrees Fahrenheit through the use of a meter
11 that is equipped with a sealed automatic temperature compensating mechanism.
12 This paragraph shall apply to all meters installed for use in the vapor measurement
13 of liquefied petroleum gas in vapor form after May 24, 1978. This paragraph does
14 not prohibit the continued use of meters previously installed without a self-sealing
15 automatic temperature compensating mechanism, but no such meter may be
16 continued in use after January 1, 1986, unless brought into compliance with this
17 paragraph. Subsection ~~(7)~~ (8) does not apply to meters used to sell or deliver liquefied
18 petroleum gas that are subject to this paragraph.

19 **SECTION 23.** 98.245 (6) (a) (intro.) of the statutes is amended to read:

20 98.245 (6) (a) (intro.) No person may sell liquefied petroleum gas and deliver
21 it by a vehicle equipped with a pump and meter unless the meter is equipped with
22 a delivery ticket printer and ~~is in compliance with sub. (7)~~ has been tested as required
23 under sub. (8). Except as provided in par. (b), the seller shall, at the time of delivery,
24 either provide a copy of the delivery ticket printed by the delivery ticket printer to

1 the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain
2 all of the following information:

3 **SECTION 24.** 98.245 (7) of the statutes is repealed.

4 **SECTION 25.** 98.245 (7m) of the statutes is created to read:

5 98.245 (7m) METER OPERATORS LICENSED. (a) No person may operate a meter
6 to determine the amount of liquefied petroleum gas sold or delivered under sub. (4)
7 (a) unless the person holds an annual license from the department under this
8 subsection. An annual license expires on November 30. A separate license is
9 required for each liquefied petroleum gas meter. A license is not transferable
10 between persons or meters.

11 (b) To obtain a license under par. (a), a person shall submit an application on
12 a form provided by the department. The application shall include all of the following:

13 1. The applicant's correct legal name and business address, and any trade name
14 under which the applicant proposes to operate the liquefied petroleum gas meter.

15 2. A description of the liquefied petroleum gas meter, including the serial
16 number or other identifying marks that appear on the meter, and if applicable, the
17 vehicle on which the meter is mounted.

18 3. The fees and surcharges required under par. (c).

19 4. Other relevant information reasonably required by the department for
20 licensing purposes.

21 (c) An application under par. (b) shall include the following fees and surcharges:

22 1. A license fee established by department rule.

23 2. A surcharge established by department rule, if the department determines
24 that, within one year prior to submitting the application, the applicant operated the
25 liquefied petroleum gas meter without a license required under par. (a). The

1 department may not issue a license under this subsection to an operator if the
2 operator has failed to pay a surcharge under this subdivision assessed against the
3 operator.

4 3. A surcharge established by the department by rule if the department
5 determines that, within one year prior to submitting the application, the applicant
6 failed to comply with a test reporting requirement under sub. (8). The department
7 may not issue a license under this subsection to an operator if the operator has failed
8 to pay a surcharge under this subdivision assessed against the operator.

9 4. Reinspection fees, if any, required under s. 98.255.

10 (d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant
11 of any other civil or criminal liability for a law violation, but is not evidence of a
12 violation of this section.

13 (e) Paragraph (a) does not apply to an individual who operates a liquefied
14 petroleum gas meter only as an employee of a person who is required to hold a license
15 under par. (a) to operate that meter.

16 **SECTION 26.** 98.245 (8) of the statutes is created to read:

17 98.245 (8) TESTING AND REPORTING. A person that is required to hold a license
18 under sub. (7m) to operate a liquefied petroleum gas meter shall have the meter
19 tested for accuracy, at least annually, by a person who is licensed under s. 98.18 (1)
20 to perform the test. The meter operator, or the tester on behalf of the meter operator,
21 shall report the results of each test to the department within 30 days after the testing
22 is completed. The operator shall retain a record of each test for at least 3 years.

23 **SECTION 27.** 98.245 (9) of the statutes is created to read:

24 98.245 (9) RULES. (a) The department shall promulgate rules that establish
25 all of the following:

1 1. License fee and surcharge amounts under sub. (7m) (c).

2 2. Standards for the testing, reporting, and record keeping required under sub.
3 (8).

4 (b) The department may promulgate rules that establish standards for the
5 construction, operation, and maintenance of liquefied petroleum gas meters.

6 **SECTION 28.** 98.25 (title) of the statutes is renumbered 98.16 (3m) (title) and
7 amended to read:

8 98.16 (3m) (title) ~~VEHICLE SCALES: ANNUAL~~ ANNUAL TESTING.

9 **SECTION 29.** 98.25 (1) of the statutes is renumbered 98.16 (3m) (a) and amended
10 to read:

11 98.16 (3m) (a) The owner or operator of a scale with a weighing capacity of
12 5,000 pounds or more used for the commercial weighing of commodities shall cause
13 the scales to be tested and inspected at least annually for accuracy by an independent
14 ~~scale testing or service company in accordance with specifications, tolerances,~~
15 ~~standards and procedures established by the national institute of standards and~~
16 ~~technology and the department for the testing and examination of scales, using test~~
17 ~~weights approved by the department. The annual tests and inspections shall be at~~
18 ~~the expense of the owner or operator~~ a person licensed under s. 98.18 (1).

19 **SECTION 30.** 98.25 (2) of the statutes is renumbered 98.16 (3m) (b) (intro.) and
20 amended to read:

21 98.16 (3m) (b) (intro.) ~~A scale testing or service company~~ person conducting a
22 test under sub. (1) par. (a) shall, ~~at the time of testing and inspection, promptly~~
23 ~~furnish to the owner or operator of the scale a report showing the results of the test~~
24 ~~and inspection with an additional copy for the department. The owner and operator~~
25 ~~of a scale which is found to be inaccurate at the time of testing shall immediately~~

1 ~~withdraw the scale from further use until necessary corrections, adjustments or~~
2 ~~repairs are made and~~ do all of the following:

3 (d) If a test under this subsection shows that a vehicle scale is inaccurate, the
4 scale may not be used until the inaccuracy is corrected and the scale is determined
5 to be accurate by ~~the scale testing or service company.~~ A copy of the report prepared
6 by ~~the scale testing or service company shall be filed with the department by the~~
7 ~~owner or operator of the scale within 15 days after the test and inspection has been~~
8 ~~completed. The department shall maintain a list open for public inspection of all~~
9 ~~scales tested and found to be accurate on the annual test~~ a subsequent test under this
10 subsection.

11 **SECTION 31.** 98.25 (3) of the statutes is renumbered 98.16 (3m) (e) and amended
12 to read:

13 98.16 (3m) (e) No person may falsify a test ~~or determination of the accuracy of~~
14 ~~a vehicle scale tested under sub. (1) or file with the department a false report of a test~~
15 ~~of a vehicle scale under sub. (1), test result, or test report under this subsection.~~

16 **SECTION 32.** 98.25 (4) of the statutes is renumbered 98.16 (3m) (f).

17 **SECTION 33.** 98.255 of the statutes is created to read:

18 **98.255 Reinspection; fee.** (1) If the department reinspects a weight or
19 measure because the department has found a violation of this chapter or a rule
20 promulgated under this chapter, the department may charge the operator of the
21 weight or measure a reinspection fee.

22 (2) The department shall establish the amount of the reinspection fee under
23 sub. (1) by rule and may establish different reinspection fees for different types of
24 weights and measures. The amount of a reinspection fee for a weight or measure may
25 not exceed the department's average cost to reinspect that type of weight or measure.

(3) A reinspection fee under sub. (1) is payable after the reinspection is completed and is due upon written demand from the department. The department may issue a demand for payment when it issues an annual license application form to the operator of the weighing or measuring device.

SECTION 9103. Nonstatutory provisions; Agriculture, Trade and Consumer Protection.

(1) **EMERGENCY RULES; WEIGHTS AND MEASURES.** The department of agriculture, trade and consumer protection may promulgate rules to establish the initial amount of a fee or surcharge under section 98.16 (3) (intro.) of the statutes, as affected by this act, or sections 98.16 (2m) (a) or (b), 98.224 (2) (c) 1., 2., or 3., 98.245 (7m) (c) 1., 2., or 3., or 98.255 (2) of the statutes, as created by this act, as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until January 1, 2011, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

(2) VEHICLE TANK METER LICENSE SURCHARGE. Notwithstanding section 98.224 (2) (c) 2. of the statutes, as created by this act, the department of agriculture, trade and consumer protection may not collect a surcharge from an applicant who has operated a vehicle tank meter without a license unless the unlicensed operation occurred after the effective date of this subsection.

(END)